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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,263	12/16/2004	Wolfgang Johannes Obermann	AT 020038	6690

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EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/518,263	Applicant(s) OBERMANN, WOLFGANG JOHANNES	
	Examiner Ghassem Alie	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/22/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) 6-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election by Original Presentation

1. Newly submitted claims 6-7 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 1 and 3-5, 6, and 7 are three distinct inventions as subcombinations disclosed as usable together in a single combination

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 and 3-5, drawn to a hair cutting apparatus, classified in class 30, subclass 133.
- II. Claim 6, drawn to a hair cutting device, classified in class 30, subclass 201.
- III. Claim 7, drawn to a hair suction apparatus, classified in class 30, subclass 124.

The inventions are distinct, each from the other because:

a. Inventions I-III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. For example, invention I has a separate utility such as it could be used without a motor having two drive shafts wherein a first drive shaft is connected to an eccentric configuration and a filter, as set forth in invention II or the adjustment wall section proximate to the suction opening which moves in reaction to a volume of hair introduced to the suction opening by widening or constricting the suction opening, as set forth in invention III. It should be noted that invention I and II do not require that the adjustment wall to be located proximate to the suction opening and moves in reaction to a volume of hair is introduced to the suction opening by widening or constricting the suction opening. Conversely, invention II and III have a separate utility such as it could be used without the

Art Unit: 3724

adjustable section that moves in a linear direction on response to contact with the hair to be cut, as set forth in invention I. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 6-7 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, “at least some of one said channel wall extending into the vicinity of said cutting device” is confusing. It should be noted that “at least one channel wall” has been claimed. Therefore, it is not clear how at least some of the one wall can be extended into the vicinity of the cutting device. It is not clear whether “at least one channel wall” is singular or plural. It is also not clear that if the at least one channel wall is a single wall how it surrounds the suction opening. It appears that the suction channel has more than one wall. Therefore, number of walls that surround the suction device

Art Unit: 3724

should be claimed. One channel wall is not sufficient to surround the suction opening of the suction device.

Comment

5. It is noted that claims have not been rejected over prior art. It appears that the prior art does not teach that the adjustable section moves in a linear direction in response to contact with the hair to be cut and adjust the flow rate in the vicinity of the cutting device, as set forth in claim 1. However, in view of issues under 35 U.S.C. 112, second paragraph, the allowability of the claimed subject matter cannot be indicated at this time.

Response to Amendment

6. Applicant's arguments with respect to claims 1 and 3-5 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3724

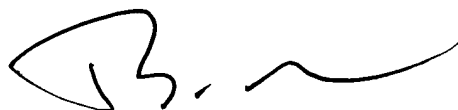
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GA/ga

November 11, 2006



BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER